

**For: Public Health Committee Meeting February 22, 2017**  
**From: Kyle Probst, Counsel and Director of Government Relations, CIOX Health, LLC**  
**RE: Proposed SB 326 (2017 Session)**

My name is Kyle Probst and I am Counsel and Director of Government Relations for CIOX Health, LLC ("CIOX") based in Alpharetta, GA. CIOX is the country's largest contractor performing HIPAA compliance for third party medical record requests. CIOX operates in all fifty states and strives to relieve medical providers of their medical record production labor and expense so that they can focus on what they do best – provide quality health care. I am here today to speak in favor of Proposed SB 326.

**Summary of the current law –**

Current law (established in 1991 for hospitals and 2004 for clinics) sets fees for the reproduction of medical records at no more than \$0.65/page, no matter who requests the records. The current law exempts patients and their "representatives" who are requesting records for a social security disability application or appeal.

**Why is SB 326 necessary?**

Connecticut medical providers are in the difficult situation of trying to implement electronic health record software ("EHR") throughout their health network while meeting federal meaningful use standards and trying to predict future Connecticut health information exchange requirements. At the same time, large hospitals and clinic practices are being acquired at record rates which results in a single medical provider having multiple EHRs. Since the great majority of EHRs are not interoperable, medical providers are faced with two unfavorable options: maintain these "legacy systems" or go through the costly endeavor of converting the acquired facility's records into the acquiring provider's EHR.

Unfortunately, the culmination of events above have made the process of producing an electronic health record to an authorized third party requestor more time consuming and difficult than when the records were on paper in a patient folder. Obtaining a record from an EHR is not as easy as pushing a button, which many people believe. (*The release of information ("ROI") process is elaborated upon in a later section.*) Each EHR has its own password protocol and each is designed differently. Simply locating a proper patient file in an EHR can require searching multiple EHRs. Therefore, individuals who research records must become experts with many different EHRs in order to ensure they are obtaining and reproducing the entire, and proper, records requested.

Therefore, the current fees, which were established in 1993, are outdated and do not compensate the provider for the labor and expense involved in producing a requested medical record. Furthermore, when these rates were established, HIPAA did not exist, electronic health records were merely in their infant stages, and data breaches were not in the news regularly. As further proof of the inadequacy of the statutory rates, in 2016 Connecticut was seventh in the nation for the highest cost of living, yet when it comes to fees for the production of medical records Connecticut is below the averages for

research and handling fees (Connecticut doesn't have one) and per page fees (currently \$0.65/page). *(Statistics are provided in a later section to confirm this point.)* Providers simply cannot afford to hire professional employees to perform medical record production at these rates. Therefore, providers may be forced to subsidize their medical record departments from revenues generated from other services.

Alternatively, many providers will turn to contractors, like CIOX, to perform medical record production. It's no coincidence that CIOX's presence in Connecticut has grown substantially since the American Recovery and Reinvestment Act of 2009, which required medical providers to implement EHRs and meet meaningful use standards or face Medicare reimbursement reductions.

CIOX, formerly HealthPort Technologies, has focused its business on medical record production for over forty years. In that time CIOX has become the model of efficiency in medical record production. CIOX can operate under statutory fees that medical providers simply cannot. However, Connecticut is a challenge with its current fee structure, even for CIOX. Adoption of the research and handling fee would relieve some of the financial burden providers, and CIOX, face when trying to produce medical records to third party requestors. What this would mean to third party requestors is that they would have to pay \$20 more for a medical record regardless of the size of the record. The research and handling fee be charged one time per request and would only be charged to third party requestors who must submit a HIPAA authorization to obtain the records. The fee essentially reimburses providers for the time and labor involved in validating the HIPAA authorization, logging the request and locating the patient file in the EHR, as well as any ancillary tasks required by the requestor. Essentially, any third party requesting records would have to pay a flat fee of \$20 more for the file than they would have paid under existing law.

While the main purpose of Proposed SB 326 is to establish a research and handling fee of \$20 for those requests that require a HIPAA authorization, the scope is broader than that. These amendments would also establish consistency with HIPAA, since HIPAA was established after the earliest version of the Connecticut law.

### **HIPAA Consistency –**

The Federal HIPAA laws pre-empt higher state law pricing for medical records for patient and personal representative requests only. HIPAA does not regulate the fees that may be charged to third parties who submit a patient signed HIPAA authorization to obtain medical records. The distinction is an important one because when the patient requests their own records no privacy issue exists. The HIPAA authorization exists to put the patient on notice of certain privacy rights the patient has to restrict what information third parties may request and receive.

***“Individual”*** means the ***person*** who is the ***subject of protected health information.***” See 45 C.F.R. 164.103 also, <https://www.law.cornell.edu/cfr/text/45/160.103>

### **Relevant guidance from the Office for Civil Rights published Feb. 25, 2016**

- I. *When do the HIPAA Privacy Rule limitations on fees that can be charged for individuals to access copies of their PHI apply to disclosures of the individual's PHI to a third party?*

The fee limits apply when an ***individual*** directs a covered entity to send the PHI to the third party. Under the HIPAA Privacy Rule, a covered entity is prohibited from charging an ***individual*** who has requested a copy of her PHI more than a reasonable, cost-based fee for the copy that covers only certain labor, supply, and postage costs that may apply in fulfilling the request. See 45 CFR 164.524(c)(4)...

In contrast, ***third parties*** often will directly request PHI from a covered entity and submit a written HIPAA authorization from the individual (or rely on another permission in the Privacy Rule) for that disclosure. Where the third party is initiating a request for PHI on its own behalf, with the individual's HIPAA authorization (or pursuant to another permissible disclosure provision in the Privacy Rule), the access fee limitations ***do not apply***...

### **Summary of the revisions in Proposed SB 326 –**

The Proposed SB 326 would:

- 1) Establish and define the term “personal representative” to be consistent with HIPAA.
- 2) Establish a \$20 research and handling fee to be paid by third party requestors. Patients and their HIPAA personal representatives DO NOT pay this fee by the very terms of the bill.
- 3) Establish a \$10 certification fee if certification is requested. HIPAA is silent on certification.
- 4) Establish standards for when an electronic copy of a medical record must be produced to a requestor.

### **Other State Fees -**

As of February 2017, the national average fee for the first page was \$0.85/page (39 states). The national average base fee for “search and retrieval”, “research and handling” etc... is \$19.31 (33 states). Additionally, the following 15 states have adopted language that allows for the periodic increase in the rates based upon CPI: Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, West Virginia, and Wisconsin.

As stated earlier, in a third quarter of 2014 study, Connecticut had the second highest cost of living standard in the country, second only to Hawaii.

These statistics place Connecticut medical providers in the unique and unfortunate situation of having to pay higher than average wages to their employees who produce medical records while collecting less than the average for the work they perform.

### **The ROI Process –**

If a patient requests their medical record they do not need to submit an authorization under HIPAA, however, a third party requesting a patient's medical record needs to submit an authorization signed by the patient. The Association of Health Information Outsourcing Specialists (AHIOS) created a 45 step flowchart explaining the labor involved in processing a third party authorized request. AHIOS is working

on revising this flowchart based upon the ubiquitous nature of electronic records but it is not ready for publication at this time. Verifying the authorization is a specialized task that requires training and HIPAA/HITECH understanding.

A valid HIPAA authorization contains the following:

Required Elements:

- 1) A description of the information requested.
- 2) The identity of the person authorized to request the information.
- 3) The identity of the entity authorized to release the information.
- 4) The purpose of the request.
- 5) Expiration date, or event, of the authorization.
- 6) Signature of the patient authorizing the request.
- 7) Date the authorization was signed and is effective.

Required Statements:

- 1) The patient has the right to revoke the authorization.
- 2) The ability or inability of the provider to condition treatment, payment, enrollment or eligibility for benefits on the authorization.
- 3) The potential for the disclosed information to be re-disclosed without authorization.

After the authorization has been validated it must be logged so it may later be recalled in the event of an accounting of disclosures pursuant to HIPAA. Once logged, the provider must locate the medical record number of the patient in their EHR to locate the actual records. The provider then searches the EHR using the medical record number.

When navigating the EHR you have to locate the responsive records. A typical EHR is set up with service dates under each patient. The service dates correspond to types of files, ie. face sheet, admission (for outpatient surgery clinics), history and physical, consultation report, possible operation/surgery report (for outpatient surgery clinics), pathology reports, laboratory reports, radiology reports, cardiology reports, special tests, progress notes, physician orders, medications, nurses notes, discharge (for outpatient surgery clinics), genetic testing, patient problem list, billing records, treatment plan, etc...The list is really endless and completely conformable to the medical providers needs. Therefore, the categories and terminology may not be consistent from one vendor to the next. Keep in mind that health system EHRs have the same set-up so the length of time it takes to search a health system EHR (as opposed to an EHR for one location) is even longer than a physician practice.

Despite common perception, electronic health records have not reduced the cost of medical record production. In fact, there is no shortage of articles written regarding the time-consuming labor necessary to search electronic health records when EHR systems are not interoperable, which very few are interoperable.

SB 326 will help bring Connecticut's medical retrieval and production system in line with the federal changes and mandates required of today's healthcare systems and providers.

Thank you for your consideration.